

# The Flinn Report

Illinois

# Regulation

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700 Stratton Bldg., Springfield IL 62706

**Joint Committee on Administrative Rules**

Illinois General Assembly

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Issue 1

*Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.*

## New Regulations

### PUBLIC ASSISTANCE

The DEPARTMENT OF HUMAN SERVICES adopted amendments for "Aid to the Aged, Blind or Disabled" (89 Ill Adm Code 113), effective 12/16/04. A companion emergency rulemaking became effective on 7/21/04. The rulemaking implements Public Act 93-741, which provides that refugees and asylees who have been found ineligible for Social Security Income (SSI) due to expiration of their seven-year eligibility period under federal law may receive aid under this program until 7/1/06 in an amount not to exceed \$500/month.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. East, 3<sup>rd</sup> Fl., Springfield IL 62762, 217/785-9772.

for Shipments and Packagings" (92 Ill Adm Code 173); "Carriage by Public Highway" (92 Ill Adm Code 177); "Specifications for Packagings" (77 Ill Adm Code 178); "Specifications for Tank Cars" (92 Ill Adm Code 179); and "Continuing Qualification and Maintenance of Packaging" (92 Ill Adm Code 180) and repealed a Part titled "Rulemaking Procedures" (92 Ill Adm Code 102). All 9 of the rulemakings became effective 12/20/04, and the 8 amended Parts update incorporations by reference of applicable federal regulations adopted between 10/03 and 10/04. Taken as a whole, the incorporated materials concern hazardous material regulations (HMR) and affect such areas as definitions of terms, regulated and non-regulated functions, and HMR applicability to specific activities (including loading, unloading, and storage of materials incident to movement) (Parts 171, 173, 177, and 178); format standardization for cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated into the HMR (Parts 171, 172, 173, 177, 178, 179, and 180); and consistency between domestic and international regulations for radioactive material (Parts 171,

(cont'd next page)

## Proposed Regulations

### WASTE DISPOSAL

The POLLUTION CONTROL BOARD proposed amendments for the following 4 Parts: "Hazardous Waste Management System: General" (35 Ill Adm Code 720), "Standards Applicable to Generators of Hazardous Waste" (35 Ill Adm Code 722), "Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities" (35 Ill Adm. Code 724), and "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities" (35 Ill Adm Code 725). The rulemakings taken as a whole compose PCB docket R05-2 and incorporate by reference 2 federal rulemakings adopted in April and one adopted in October. According to PCB, the federal Environmental Protection Agency rulemakings adopted 4/22/04 allow members of the National Environmental Performance Track Program to accumulate hazardous waste for an extended time (270 days in some instances) before they become subject to hazardous waste treatment, storage, and disposal facility standards. Federal EPA amendments adopted 4/26/04 exclude waste emissions connected to coatings and solvents from auto and light-duty truck surface coating operations that are subject to national emission standards for hazardous air pollutants (NESHAP) from such NESHAP standards. The 10/25/04 federal changes are a direct final rule correcting the 4/22/04 amend-

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### HAZARDOUS MATERIALS

The DEPARTMENT OF TRANSPORTATION adopted amendments for the following 8 Parts: "Procedures" (92 Ill Adm Code 107); "Hazardous Materials Transportation: General Information, Regulations and Definitions" (92 Ill Adm Code 171); "Hazardous Materials Table and Hazardous Materials Communications" (92 Ill Adm Code 172); "Shippers General Requirements

**NEW REGULATIONS:** Rules adopted by agencies this week.

**PROPOSED REGULATIONS:** Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

**QUESTIONS/COMMENTS/RULE TEXT:** Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

# New Regulations

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172, 173, 177, and 178). A new section is added to Part 171 that prohibits any person from offering, accepting, or transporting any hazardous materials in commerce by highway in Illinois that may pose an imminent danger to the public. The Illinois State Police are authorized to stop any such vehicle. These amendments also specify that preemption determination procedures and references to approvals, exemptions, or registration are covered by the HMR, and penalties for knowingly violating federal hazardous material transportation law, order, exemption or approval, or any Illinois hazardous material transportation regulations can be found at 92 Ill Adm Code 107. Additional Part 171 changes: (1) revise the incident report form to include more specific packaging information; (2) require each person in physical control of a hazardous material to report any incident while the material is in that person's possession; (3) require reporting of incidents involving a "specification" cargo tank with 1,000 gallons or more capacity that receives structural damage that may affect the cargo tank's ability to retain its load; (4) require reporting of discoveries of undeclared hazardous material shipments; (5) require updating incident reports when new information becomes available; and (6) excepting small releases of specified materials that pose the least hazard from reporting requirements. A further change to Part 172 extends the mandatory com-

pliance date for "air eligibility marking" from 10/1/04 to 10/1/06. According to DOT, several other non substantive revisions are made to alter formatting, correct editorial errors, make minor regulatory changes, and clarify HMR provisions. The repealed Part 102 explained how to petition the Department concerning rules for transportation of hazardous materials and how to obtain relevant information and documents from DOT. The Department states that these rules are no longer needed because the federal government now regulates both intrastate and interstate hazardous material transportation. Small businesses, small municipalities, and not-for-profit corporations that may be affected by these rulemakings include placarded hazardous material transporters, those who manufacture specific packaging for hazardous materials transported by highway, and owners or operators of commercial motor vehicles in Illinois.

Questions/requests for copies of the 9 rulemakings above: Catherine Allen, DOT, 3215 Executive Dr., 3<sup>rd</sup> Fl., Springfield IL 62794-9212, 217/785-1181.

## STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted a peremptory amendment for "Pay Plan" (80 Ill Adm Code 310), effective 12/15/04, to reflect a collective bargaining agreement with the American

Federation of State, County and Municipal Employees (AFSCME) and the State. The memorandum of understanding was signed 11/16/04 and affects specified Department of Corrections employees (other than guards) who have direct contact with inmates. The rulemaking provides fiscal year 2005 salary rates, including the 2.75% increase on 1/1/05, for these security-rated job classifications.

Questions/requests for copies: Dawn DeFraties, DCMS, 502 Stratton Bldg., Springfield IL 62706, 217/524-8773, Fax 217/558-4497.

## WATERCRAFT TAXES

The DEPARTMENT OF REVENUE adopted an emergency rulemaking titled "Watercraft Use Taxes" (86 Ill Adm Code 153), effective 12/16/04, for a maximum of 150 days. The rulemaking establishes a new Part to implement Public Act 93-840, which required DOR to impose a tax on the privilege of using certain defined watercraft in this State that are acquired by gift, transfer, or non-retail purchase after 9/1/04. The rulemaking provides definitions, examples of how the tax is imposed, basis and rate of the tax, exemptions, and returns and payment.

Questions/requests for copies: Edwin E. Boggess, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

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ments. Additional Part 720 changes update incorporations by reference of federal regulations to the current available edition, list incorporations used in related PCB Parts, and update statutory citations. Also, material published by the Organisation for Economic Co-operation and Development in France is incorporated by reference. Related Part 722 changes add definitions for amber-list controls and waste, green-list controls and waste, and red-list controls and waste. Those affected by these amendments include small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste.

Questions/requests for copies/comments concerning the 4 rulemakings above until 2/16/05: Dorothy M. Gunn, Clerk, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-6931 or Michael J. McCambridge at the same address, 312/814-6924, E-mail: mccambm@ipcb.state.il.us. Please reference docket R05-2.

## MEDICAL ASSISTANCE

The DEPARTMENT OF PUBLIC AID proposed amendments for “Medical Payment” (89 Ill Adm Code 140) to amend the definition of “vendor” by adding “provider” as a synonym. Additional changes specify that a medical service provider’s designated alternate payee must accept and forward to the business entity or individual practitioner any remittance advice sent by DPA. Also, DPA prohibits designation of a payee or alternate payee who appoints, employs, or contracts with any person as an owner, officer, director, or individual with management or advisory responsibility and who is terminated, suspended barred or has voluntarily withdrawn as a result of a settlement agreement from any state or federal healthcare program. Medical practitioners whose employers require as a condition of employment that fees be turned over to the employer are stricken from the list of those who are permitted to designate an alternate

payee, and individual practitioners employed by a rural health center, encounter rate clinic, or hospital affiliate are added to that list. Those affected by this rulemaking include medical service providers under DPA’s Medical Assistance Program.

Questions/requests for copies/comments until 2/16/05: Joanne Scattoloni, DPA, 201 S. Grand Ave. E., 3<sup>rd</sup> Fl., Springfield IL 62763-0002, 217/524-0081.

## FARRIER LICENSING

The ILLINOIS RACING BOARD proposed an amendment for “Licensing” (11 Ill Adm Code 502) to specify that an applicant for a farrier’s (blacksmith) license who has never been licensed before must pass an oral examination and a practical examination consisting of shoeing a horse and making 2 specified types of horseshoes. The examinations must be given by 2 licensed and experienced farriers and witnessed by a steward or steward’s designee. The Board may also accept a horseshoer’s license from another racing jurisdiction. In conjunction with this proposed rulemaking, the Board announced the withdrawal of proposed amendments for this Part that were published in the 7/9/04 *Illinois Register*. The withdrawn rulemaking required 3 licensed farriers with 10 years experience each to administer the exams, and a farrier who had never been licensed before was required to serve a 1-year apprenticeship. Those seeking Board licensure as a farrier and those who employ the services of a farrier may be affected by this rulemaking.

Questions/requests for copies/comments concerning the proposed rulemaking until 2/16/05: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

## STATE TREASURER

The ILLINOIS STATE TREASURER proposed amendments for “Conditions of Employment” (80 Ill Adm Code 630) to allow certain employees

of the State Treasurer who are assigned to the Illinois Emergency Management Agency (IEMA) to be granted paid leave for up to 20 working days in any 12-month period upon IEMA’s request and approval of the Treasurer. Current rule applies only to requests from the American Red Cross.

Questions/requests for copies/comments until 2/16/05: Daniel Yabut, Office of the State Treasurer, 100 W. Randolph, Ste. 15-600, Chicago IL 60601, 312/814-8950.

## RAILROADS

The ILLINOIS COMMERCE COMMISSION proposed amendments for the following 5 Parts: “Minimum Clearances Applicable to Tracks, Structures, Fixtures and Other Appurtenances of Railroads” (92 Ill Adm Code 1500); “Registration of Rail Carriers” (92 Ill Adm Code 1501); “Report of Railroad Accidents/Incidents” (92 Ill Adm Code 1515); “Crossings of Rail Carriers and Highways” (92 Ill Adm Code 1535); and “Hazardous Materials” (92 Ill Adm Code 1605). All five rulemakings contain housekeeping and other nonsubstantive changes. In addition, Part 1500 amendments incorporate by reference various standards for vertical and horizontal clearances prescribed by the American Railway Engineering and Maintenance-of-Way Association (AREMA). The rulemaking also incorporates by reference vertical clearances of all electric or other wires crossing over railroad tracks as required by the National Electric Safety Code. Clearances for highway bridges spanning railroad tracks are added, but the Commission may permit lesser clearances if they are justified by engineering, operational, and economic conditions. Part 1535 amendments update references to AREMA standards, add incorporations by reference of the federal *Manual on Uniform Traffic Control Devices* railway sign requirements, revise definitions, and strike text pertaining to procedures at crossings where a watchman is stationed. A new section requires rail carriers to

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install temporary stop signs whenever the ICC requires the carrier to install permanent automatic flashing light signals or signals and gates at an existing public highway grade crossing that is equipped with crossbuck warning signs. Other changes affect crossbuck signs and other warning indicators, lenses and "roundels", procedures for making changes in marking or warning devices, and barricade construction. A section pertaining to manual operation of signals and 6 illustrations currently contained in the Part are repealed. Forms for notifying the Commission of a proposed minor change in crossing markings or warning devices and the subsequent completion of the change are added, as is a form to request permission to make a major change in existing warning devices or to install new warning devices. The Part 1515 rulemaking incorporates by reference current federal regulations for reporting railroad accidents and incidents, repeals the current section regarding such reports, specifies that any telephone reports submitted to the Federal Railroad Administration must also be submitted to the Illinois Emer-

gency Management Agency, and provides that failure to submit required reports is a violation of law and subject to certain sanctions. Part 1605 amendments update incorporations by reference of federal regulations concerning hazardous material transportation by rail. Rail carriers and railroad construction companies are affected by these 5 rulemakings.

The Commission also proposed repealing the following 10 Parts: "Sidings and Spur Tracks" (92 Ill Adm Code 1505), "Removal or Discontinuance of Station or Agency" (92 Ill Adm Code 1520), "Staggers Act" (92 Ill Adm Code 1565), "Rail Carrier Rates" (92 Ill Adm Code 1570), "Filing Rail Carrier Rates" (92 Ill Adm Code 1575), "Investigation and Suspension of Rail Carrier Rates" (92 Ill Adm Code 1580), "Market Dominance by Rail Carriers" (92 Ill Adm Code 1585), "Complaints Against Rail Carrier Rates" (92 Ill Adm Code 1590), "Rail Carrier Contract Rates" (92 Ill Adm Code 1595), and "Exemption of Rail Carrier Transportation" (92 Ill Adm Code 1600). According to the ICC, these Parts are being repealed because federal law now preempts states' jurisdiction over these matters. Small businesses that are rail carriers subject to the jurisdiction of the Commission

may be affected by these rulemakings.

Questions/requests for copies/comments concerning the 15 ICC rulemakings above until 2/16/05: Steven L. Matrisch, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/782-6447, E-mail: smatrisc@icc.state.il.us

## **MINING RULE WITHDRAWN**

The DEPARTMENT OF NATURAL RESOURCES announced the withdrawal of proposed amendments for "Permanent Program Performance Standards – Underground Mining Operations" (62 Ill Adm Code 1817) that were published in the 12/17/04 *Illinois Register*. The withdrawn amendments updated statutory citations and clarified the applicability of damage repair requirements. DNR states that it has determined additional text changes are necessary for this Part.

Questions/requests for copies: Jack Price, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

## Second Notices

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The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's 1/11/05 meeting in Springfield.

### **STATE BOARD OF EDUCATION**

"Public Schools Evaluation, Recognition and Supervision" (23 Ill Adm Code 1) proposed 10/8/04 (28 Ill Reg 13284)

### **DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

"Electrologist Licensing Act" (68 Ill Adm Code 1246) proposed 11/5/04 (28 Ill Reg 14402)

### **DEPARTMENT OF PUBLIC HEALTH**

"Manufactured Home Community Code" (77 Ill Adm Code 860) proposed 1/30/04 (28 Ill Reg 1652)

"Illinois Manufactured Home Tiedown Act" (77 Ill Adm Code 870) proposed 1/30/04 (28 Ill Reg 1674)

"Manufactured Home Installation Code" (77 Ill Adm Code 870) proposed 2/13/04 (28 Ill Reg 2613)

"Illinois Modular Dwellings and Mobile Structures Code" (77 Ill Adm Code 880) proposed 1/30/04 (28 Ill Reg 1684)

"Manufactured Home Installer Course Accreditation Code" (77 Ill Adm Code 885) proposed 1/30/04 (28 Ill Reg 1717)

### **REVENUE**

"Income Tax" (86 Ill Adm Code 100) proposed 10/29/04 (28 Ill Reg 14090)

### **DEPARTMENT OF EMPLOYMENT SECURITY**

"Claimant's Availability for Work, Ability to Work and Active Search for Work" (56 Ill Adm Code 2865) proposed 10/22/04 (28 Ill Reg 13892)

"Claims, Adjudication, Appeals and Hearings" (56 Ill Adm Code 2720) proposed 10/22/04 (28 Ill Reg 13864)

"Notices, Instructions, Reports to Workers; Inspections" (56 Ill Adm Code 2760) proposed 10/22/04 (28 Ill Reg 13872)

"Disqualifying Income and Reduced Benefits" (56 Ill Adm Code 2920) proposed 10/22/04 (28 Ill Reg 13900)

### **DEPARTMENT OF NATURAL RESOURCES**

"Public Use of State Parks and Other Properties of the Department of Natural Resources" (17 Ill Adm Code 110)

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# **Regulation**

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